

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

CRIMINAL ACTION NO. 2:06-cr-206

RICHARD LEE CONNER,

Defendant.

MEMORANDUM OPINION AND JUDGMENT ORDER

The Court has reviewed a motion, brought pursuant to 18 U.S.C. § 3582(c)(2), to reduce Defendant's sentence based on a subsequent reduction in the applicable sentencing guideline. On November 1, 2010, pursuant to the Fair Sentencing Act of 2010, the United States Sentencing Guidelines were amended resulting in reductions in the guidelines in Section 2D1.1 for cocaine base. These temporary, emergency amendments to the Guidelines took effect on November 1, 2010. Permanent amendments implementing the Act were promulgated on April 6, 2011, with an effective date of November 1, 2011. Subsequently, the Sentencing Commission voted to give retroactive effect to the permanent amendments. Pursuant to a Standing Order entered on October 7, 2011, this case was designated for standard consideration.

The Court has received and considered the original Presentence Investigation Report (PSI), original Judgment and Commitment Order and Statement of Reasons, plea agreement, and addendum to the PSI from the Probation Office. The Court has also considered the applicable factors under 18 U.S.C. § 3553(a), consistent with § 3582(c)(2), and public safety.

Defendant's original Presentence Investigation Report attributed to him 42.5 grams of cocaine base. His original offense conduct resulted in a base offense level of 30, and a criminal history category of I. This Defendant received a two-level reduction pursuant to U.S.S.G. § 5C1.2 for meeting the criteria in subdivisions (1)-(5) of that section. No other enhancements or reductions, were applied. His original guideline range was 78 - 97 months. On January 9, 2009, as a result of the 2007 United States Sentencing Guideline amendment, Defendant's base offense level was reduced by two levels, resulting in a new total offense level of 26. His corresponding guideline range was 63 to 78 months. His previous sentence was reduced to 63 months, with credit for time served.

During his period of incarceration since that time, the Court observes that Defendant has been sanctioned for failing to work as instructed and possessing a hazardous tool, a cell-phone. He has completed his financial responsibility requirements and the 40-Hour drug education program offered by the Bureau of Prison. However, he was expelled on June 23, 2010 from the 500-Hour residential drug treatment program. Counsel for Defendant advises that Defendant has recently completed a class on re-entering society after incarceration and has complied with the DNA collection program. Prior to his conviction for the instant offense, Mr. Conner had one drug conviction and a moderate substance abuse history. The Court also observes that he has had a sporadic employment history.

By its written and filed response, the United States does not object to the reduction ordered herein.

Based on the foregoing considerations, the Motion is **GRANTED**. The Court **ORDERS** that Defendant's base offense level be reduced by two levels, resulting in a new total offense level

of 24. Given this total offense level and his criminal history category of I, Defendant's new advisory guideline range becomes 51 to 63 months. It is further **ORDERED** that Defendant's previous sentence be reduced to a period of fifty-one months (51) months, with credit for time served to date. This Order is subject to the prohibition contained within U.S.S.G. §1B1.10(b)(2)(C). Lastly, the Court **ORDERS** that upon his release, the Defendant complete a period of ninety (90) days in a halfway house in the event he has not previously completed the same during his current period of incarceration, as a modification of his conditions of supervised release.

The Court **DIRECTS** the Clerk to send a copy of this Order to Defendant and counsel, the United States Attorney, the United States Probation Office, and the United States Marshals.

ENTER: November 14, 2011



IRENE C. BERGER
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF WEST VIRGINIA